

in paragraph (b) of this section, the advice of the Scientific and Statistical Committee, and any other relevant information, the Skate PDT may also recommend to the Skate Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of the skate complex and its component species. These adjustments may be included in the Council's specifications for the skate fisheries.

(7) *Council recommendation.* The Council shall review the recommendations of the Skate PDT, Skate Committee, and Scientific and Statistical Committee, any public comment received thereon, and any other relevant information, and make a recommendation to the Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The Council's recommendation must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall consider the recommendations and publish a rule in the FEDERAL REGISTER proposing specifications and associated measures, consistent with the Administrative Procedure Act. The Regional Administrator may propose specifications different than those recommended by the Council. If the specifications published in the FEDERAL REGISTER differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section, the FMP, and other applicable laws. If the final specifications are not published in the FEDERAL REGISTER for the start of the fishing year, the previous year's specifications shall remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(b) *Biennial SAFE Report*—(1) The Skate PDT shall prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate

complex. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE skate complex and its associated fisheries. The SAFE Report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) In any year in which a SAFE Report is not completed by the Skate PDT, the annual review process described in paragraph (a) of this section shall be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

[75 FR 34058, June 16, 2010]

§ 648.321 Framework adjustment process.

(a) *Adjustment process.* To implement a framework adjustment for the Skate FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings (the initial meeting agenda must include notification of the impending proposal for a framework adjustment) and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before the Council submits its recommendations to the Regional Administrator.

(1) *Council review and analyses.* In response to the annual review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Skate FMP. After a framework action has been initiated, the Council shall develop and analyze appropriate management actions within the scope of measures specified in paragraph (b) of this section. The Council shall publish notice of its intent to take action and provide the public with any relevant analyses and opportunity to comment on any possible actions. Documentation and analyses for the framework adjustment shall be available at least 1 week before the final meeting.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph (a)(1) of this section, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the framework measures should be issued directly as a final rule, without opportunity for public notice and comment, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

- (i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;
- (ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;
- (iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and
- (iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) The Regional Administrator may publish the recommended framework measures in the FEDERAL REGISTER. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the FEDERAL REGISTER.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the FEDERAL REGISTER. The Secretary, in so doing, shall publish only the final

rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the FEDERAL REGISTER.

(5) The Regional Administrator may approve, disapprove, or partially approve the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

(b) *Possible framework adjustment measures.* Measures that may be changed or implemented through framework action, provided that any corresponding management adjustments can also be implemented through a framework adjustment, include:

- (1) Skate permitting and reporting;
- (2) Skate overfishing definitions and related targets and thresholds;
- (3) Prohibitions on possession and/or landing of individual skate species;
- (4) Skate possession limits;
- (5) Skate closed areas (and consideration of exempted gears and fisheries);
- (6) Seasonal skate fishery restrictions and specifications;
- (7) Target TACs for individual skate species;
- (8) Hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or quotas for non-directed fisheries;
- (9) Establishment of a mechanism for TAC set-asides to conduct scientific research, or for other reasons;
- (10) Onboard observer requirements;
- (11) Gear modifications, requirements, restrictions, and/or prohibitions;
- (12) Minimum and/or maximum sizes for skates;
- (13) Adjustments to exemption area requirements, area coordinates, and/or management lines established by the FMP;
- (14) Measures to address protected species issues, if necessary;
- (15) Description and identification of EFH;
- (16) Description and identification of habitat areas of particular concern;
- (17) Measures to protect EFH;

- (18) OY and/or MSY specifications;
- (19) Changes to the accountability measures described at § 648.323;
- (20) Changes to TAL allocation proportions to the skate wing and bait fisheries;
- (21) Changes to seasonal quotas in the skate bait or wing fisheries;
- (22) Reduction of the baseline 25-percent ACL-ACT buffer to less than 25 percent; and
- (23) Changes to catch monitoring procedures.

(c) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

[75 FR 34059, June 16, 2010]

§ 648.322 Skate allocation, possession, and landing provisions.

(a) *Allocation of TAL.* (1) A total of 66.5 percent of the annual skate complex TAL shall be allocated to the skate wing fishery. All skate products that are landed in wing form, for the skate wing market, or classified by Federal dealers as food as required under § 648.7(a)(1)(i), shall count against the skate wing fishery TAL.

(2) A total of 33.5 percent of the annual TAL shall be allocated to the skate bait fishery. All skate products that are landed for the skate bait market, or classified by Federal dealers as bait as required under § 648.7(a)(1)(i), shall count against the skate bait fishery TAL. The annual skate bait fishery TAL shall be allocated in three seasonal quota periods as follows:

- (i) Season 1—May 1 through July 31, 30.8 percent of the annual skate bait fishery TAL shall be allocated;
- (ii) Season 2—August 1 through October 31, 37.1 percent of the annual skate bait fishery TAL shall be allocated; and
- (iii) Season 3—November 1 through April 30, the remainder of the annual skate bait fishery TAL not landed in Seasons 1 or 2 shall be allocated.

(b) *Skate wing possession and landing limits.* A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, and fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92,

respectively, unless otherwise exempted under § 648.80 or paragraph (c) of this section, may fish for, possess, and/or land up to the allowable trip limits specified as follows:

(1) Up to 2,600 lb (1,179 kg) of skate wings (5,902 lb (2,677 kg) whole weight) per trip from May 1 through August 31, and 4,100 lb (1,860 kg) of skate wings (9,307 lb (4,222 kg) whole weight) per trip from September 1 through April 30, except for a vessel fishing on a declared NE multispecies Category B DAS described under § 648.85(b), which is limited to no more than 220 lb (100 kg) of skate wings (500 lb (227 kg) whole weight) per trip (or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27—for example, 100 lb (45.4 kg) of skate wings \times 2.27 = 227 lb (103.1 kg) of whole skates).

(2) *In-season adjustment of skate wing possession limits.* When the Regional Administrator projects that 85 percent of the annual skate wing fishery TAL has been landed, the Regional Administrator shall, through a notice in the FEDERAL REGISTER consistent with the Administrative Procedure Act, reduce the skate wing trip limit to 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight, or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27) for the remainder of the fishing year, unless such a reduction would be expected to prevent attainment of the annual TAL.

(3) *Incidental possession limit for vessels not under a DAS.* A vessel issued a Federal skate permit that is not fishing under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, or is a limited access multispecies vessel participating in an approved sector described under § 648.87 but not fishing on one of the DAS specified at §§ 648.53, 648.82, or 648.92, may retain up to 500 lb (227 kg) of skate wings or 1,135 lb (515 kg) of whole skate, or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27, per trip.